

**UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

TONYA GORE,

Plaintiff

V.

TORRES CREDIT SERVICES, INC.,

Defendant

Case No.: 3:15-cv-151

COMPLAINT AND DEMAND FOR JURY TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

TONYA GORE (“Plaintiff”), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against TORRES CREDIT SERVICES, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

1 April 2015, Defendant placed automated and manual dialed calls to Plaintiff's
2 cellular telephone in an attempt to collect a consumer debt.

3
4 13. Plaintiff never provided Defendant her cell phone number.

5 14. Defendant contacted Plaintiff repeatedly during the time period
6 referenced above.

7 15. It was inconvenient for Plaintiff to receive collection calls to her
8 cellular telephone, as she and her husband were going through financial hardship
9 due to her husband being injured at work, requiring her to curtail cell phone usage
10 wherever possible.
11

12 16. Defendant called from telephone numbers including (866) 756-6804,
13 revealed as the caller ID on Plaintiff cellular phone. The undersigned has verified
14 that the number belongs to Defendant in preparation for filing this Complaint.
15

16 17. Defendant records telephone calls it makes to consumers.

17 18. In one recorded call, the conversation proceeded as follows:
18

19 FIRST RECORDING
20

21 Collector: "Hello, may I speak with Tanya Gore?"

22 Plaintiff: "This is her."

23 Collector: "Pardon?"

24 Plaintiff: "Yes? This is her."

25 Collector: "Oh that's you. Ok. My name is Karen, calling from Torres Credit Services, calling to collect a debt. Any information will be used for that purpose...Call is recorded for quality."

Plaintiff: "Y'all aren't going to get that debt today, I can tell you that right now."

Collector: "When would you be able to pay the \$37.00 for UGI?"

1 Plaintiff: "Oh, let's see. Probably within the next 6 months when my injured
2 husband is able to go back to work."

3 Collector: "I have to mark it as a refusal. Collection will continue. Thank you."
[call is terminated by collector]

4 19. Plaintiff never refused to pay.

5 20. The collector's response did not match what Plaintiff said and in fact
6 was a contradiction.
7

8 21. The collector's words show an intent to use false, misleading, and
9 deceptive characterizations in order to collect a debt.
10

11 22. The same words were intended to give a false impression to Plaintiff
12 that an inability to pay constitutes a refusal to pay and would result in further
13 collection.

14 23. Once aware that Plaintiff could not pay for at least 6 months, there
15 was no purpose for the collector threatening that collection efforts would continue
16 unless the intent of that statement was to harass.
17

18 24. Upon being notified that Plaintiff could not pay for at least 6 months,
19 Defendant was on notice that collection before that time ended could only be
20 harassing to Plaintiff.
21

22 25. The collector's abrupt termination of the call after stating that the
23 account would be marked as a refusal, was harassing and abusive.
24

25 26. After the above call, Defendant continued collection efforts, and
placed additional calls. In a second recorded call, the conversation proceeded as

1 follows:

2 SECOND RECORDING

3 Collector: "Hello?"

4 Plaintiff: "Hello?"

5 Collector: "Hi, I'm trying to reach Tanya Gore."

6 Plaintiff: "This is her."

7 Collector: "Hi Mrs. Gore. My name is Mrs. Jones, calling from Torres Credit Services. How are you doing today?"

8 Plaintiff: "Good."

9 Collector: "Good. I do have to advise you all calls are recorded for quality. This is an attempt to collect a debt. Any information obtained will be used for that. Now my client is UGI Utilities. They place you in our office for a \$37.00 connection fee. And at this time my client is asking for final resolution, so we can just close it out and get you out of collections, 'cause you've been in our office since November 26th...of last year. So we're trying to close it out today, ma'am. How would you like to take care of this small balance?"

12 Plaintiff: "For \$37.00?"

13 Collector: "Yes, ma'am."

14 Plaintiff: "I'm not gonna be able to do that today. Maybe when my income tax comes in though."

15 Collector: "Ok. There's no way you could post it for maybe the end of the month, and we can still close it out today? So we can notify my client?"

16 Plaintiff: "Yeah, well, I'm not... I'm not working right now..."

17 Collector: "Oh, you're not? You don't have any sorts of income right now?"

18 Plaintiff: "No, I don't." "My husband just got injured at work, so we, neither one of us have any income right now."

19 Collector: "Oh, do you think maybe your husband can make this small payment for you?"

20 Plaintiff: "I just said he got injured at work. He doesn't have any income."

21 Collector: "Oh, my... I do apologize."

22 Plaintiff: "Can I call in and make it? If it's just that amount... I mean, it's not really a big..."

23 Collector: "Right, you can always give us a call back, but I do have to advise you I do have to put it down and notify my client as a refusal for today... and we'll update you in about a week. We will be calling on a weekly basis until we get this resolved, um, and get it closed out. Yeah, it's \$37.00, um, to close it out."

25 -----

27. As with the first recording, "Mrs. Jones", stated that the collector's

1 “client” would be notified that Plaintiff refused to pay, but Plaintiff did not refuse
2 to pay.

3 28. “Mrs. Jones” statement that “we will be calling on a weekly basis
4 until we get this resolved” constitutes a threat of harassment for non-payment,
5 without regard to the reason for non-payment and was uttered despite Plaintiff
6 having said that she wants to pay the debt and intended to “call in”.
7

8 29. Defendant continued to call Plaintiff.
9

10 30. Upon information and belief, Defendant did not accurately update its
11 records regarding Plaintiff’s inability to pay, provided in the above-referenced
12 telephone calls.
13

14 31. Defendant’s actions as described herein were made with the intent to
15 embarrass, harass, upset, deceive, and in context, coerce payment to pay to stop
16 the calls.
17

18 **DEFENDANT VIOLATED THE**
19 **FAIR DEBT COLLECTION PRACTICES ACT**

20 32. In its actions to collect a disputed debt, Defendant violated the
21 FDCPA in the following ways:

22 **COUNT I**

- 23 a. A debt collector violates § 1692d of the FDCPA by engaging in
24 conduct the natural consequence of which is to harass, oppress,
25 or abuse any person in connection with the collection of a debt.

- b. A debt collector violates § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- c. Here, Defendant violated §§ 1692d and 1692d(5), of the FDCPA when its collectors promised to continue calling and then did persist in calling, after being told that Plaintiff was unable to pay for at least 6 months.

COUNT II

- a. A debt collector violates § 1692e of the FDCPA by using any other false, deceptive, or misleading representation or means in connection with debt collection.
- b. A debt collector violates 1692e(10) by use of a false representation or deceptive means to collect a debt or obtain information about a consumer.
- c. Here, Defendant violated § 1692e and 1692e(10) of the FDCPA when (1) its collectors stated in recorded conversations that the account would be marked as a “refusal” to pay and collection efforts would continue; when Plaintiff never refused to pay; and (2) when “Mrs. Jones” promised to “update” Plaintiff in a week

1 as an excuse to call, when Defendant had nothing to update
2 Plaintiff about.

3
4 **COUNT III**

5 a. A debt collector violates § 1692f of the FDCPA by using unfair
6 or unconscionable means to collect or attempt to collect any
7 debt.

8
9 b. Here, Defendant violated § 1692f of the FDCPA by (1) failing
10 to update its records accurately so that further calls would not
11 be made to Plaintiff; (2) by indicating that an inability to pay
12 would be noted as a refusal to pay; (3) by abruptly terminating
13 collection calls in an abusive manner; and (4) by threatening to
14 make additional calls weekly, knowing that Plaintiff was unable
15 to pay, having no purpose for calls under the circumstances.
16
17

18
19 WHEREFORE, Plaintiff, TONYA GORE, respectfully prays for a judgment
20 as follows:

- 21 a. All actual damages suffered pursuant to 15 U.S.C. §
22 1692k(a)(1);
23
24 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
25 pursuant to 15 U.S.C. § 1692k(a)(2)(A);

- 1 c. All reasonable attorneys' fees, witness fees, court costs and
2 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
3 § 1693k(a)(3); and
4
5 d. Any other relief deemed appropriate by this Honorable Court.
6

7 **DEMAND FOR JURY TRIAL**
8

9 PLEASE TAKE NOTICE that Plaintiff, TONYA GORE, demands a jury
10 trial in this case.

11 DATED: May 28, 2015

RESPECTFULLY SUBMITTED,

12 /s/ Craig Thor Kimmel
13

CRAIG THOR KIMMEL

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